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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by International Alert, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 March 1999]

Executive summary and main recommendations

1. Mercenaries fight for financial gain in armed conflicts alien to their own nationality. The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination is a serious concern for the Commission on Human Rights which has become increasingly prevalent and taken on worrying new dimensions in recent years. A lack of political will has meant that the international community has failed to mount an appropriate response that would halt the proliferation of mercenary activity. The following submission pinpoints some of the complex human rights concerns associated with mercenary activity and makes a series of recommendations on how the Commission on Human Rights, and the wider United Nations system, can improve its effectiveness for dealing with the issue. In particular it recommends that:

> The Member States of the United Nations ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;
>
> The mandate of the Special Rapporteur on the use of mercenaries be extended and the adverse effects of mercenary activity publicized more widely;
>
> The Commission on Human Rights seek to work more closely with the United Nations Crime Prevention and Criminal Justice Division so as to tackle the criminal activities associated with mercenaries at the same time as the human rights concerns.

Mercenaries in the 1990s

2. The use of mercenaries in conflicts is becoming increasingly common in the 1990s because of the security gap left by the international community's continued reluctance to intervene in a growing number of internal conflicts. At the same time, the end of the cold war and associated military cutbacks has left a glut of highly-skilled military personnel keen to continue to use their military skills by fighting in foreign wars. In recent years there has, in addition, been a growth of companies in the international market which have begun to offer security and military services with the use of mercenaries to beleagured Governments and mineral corporations operating in conflict regions. This more sophisticated form of mercenarism does not alter its intrinsic nature, but these new methods help to mask the dangers they present.

3. Mercenaries are now more involved in ongoing armed conflicts than at any time since the 1960s. There have been official reports of mercenary activity (including individual soldiers of fortune and the more sophisticated corporate mercenary groups) in: Kashmir, Afghanistan, Liberia, the former-Zaire, Angola, Congo, the Democratic Republic of the Congo, Sierra Leone, the former Yugoslavia, recent fighting between Eritrea and Ethiopia, and numerous other conflicts around the world. The origins of these mercenaries are to be found in an equally extensive list of countries, from the former Soviet Union, Europe, the Middle East, the Americas and Africa.

The United Nations response to mercenary activity

4. The United Nations General Assembly passed its first resolution 1/ condemning the use of mercenaries in 1968. 2/ Since then, the General Assembly, the Security Council, the Economic and Social Council and the Commission on Human Rights have repeatedly condemned mercenary activity as internationally unlawful and serving to undermine the exercise of the right to self-determination of peoples and the enjoyment of human rights. For these reasons, in 1987, the Commission on Human Rights established the mandate of the Special Rapporteur on the question of the use of mercenaries.

United Nations Convention

5. By resolution 44/34 of 4 December 1989, the United Nations General Assembly adopted and opened for signature and ratification the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. To enter into force, the Convention must be ratified by 22 Member States. To date only 16 States have done so with a further 10 States having signed, but not yet ratified. 3/ When the Special Rapporteur delivered his report to the Commission on Human Rights in 1996, the Convention had been ratified by only 9 States, with a further 12 signatories. While this is not rapid progress, there is clearly momentum behind the ratification process and extra work for the Special Rapporteur to ensure that questions about the Convention are answered and signatories solicited so that it enters into force. The delay in the Convention's entry into force can only encourage the continuation of this unlawful activity.

Recommendation

The Member States of the United Nations should ratify or accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries as soon as possible so that it can enter into force.

Persistence of mercenarism

6. The persistence of mercenary activity can, in part, be attributed to gaps and ambiguities within existing international legislation, in particular the definition that has been used for a mercenary in the relevant instruments and technical difficulties associated with their enforceability. These deficiencies have meant that international norms relating to mercenaries have not been sufficient to combat the growth of the phenomenon and perpetrators of these unlawful acts have been allowed to continue with relative impunity. The international community should therefore investigate the connection between the persistence of mercenary activities and the egregious gaps in relevant international instruments and seek ways to amend them in order to improve their effectiveness.

Recommendation

In accordance with earlier General Assembly resolutions, an expert meeting should be convened to study the question of mercenaries in greater depth and review and update international legislation in order to ensure greater legal clarity as to how the problem can be tackled.

Rationalization of the work of the Commission

7. During the fifty-fifth session of the Commission on Human Rights, delegates will meet to discuss the report which the Bureau of its fifty-fourth session compiled on the rationalization of the work of the Commission. 4/ International Alert welcomes the report as a means of improving the effectiveness of the Commission's mechanisms and the capacity of the United Nations to promote and protect internationally recognized human rights and contribute to preventing their violation. However, paragraph 20, Recommendation 1 (e), recommends that the Commission consider a proposal to "Terminate the mandate of the Special Rapporteur on the use of mercenaries and recommend that this matter be henceforth considered directly in the General Assembly (Sixth Committee)".

United Nations Special Rapporteur on the use of mercenaries

8. International Alert considers mercenaries an important human rights issue, which the Commission should continue to address. There is clearly further necessary work for the Special Rapporteur on the use of mercenaries to ensure that the International Convention mentioned above comes into force. Indeed, the Bureau's proposals are contrary to resolution 1998/6 of 27 March 1998, adopted by 35 votes to 9, with 8 abstentions 5/ in which the Commission extended the Special Rapporteur's mandate for a further three years. International Alert is concerned that if this matter is passed on to the General Assembly (Sixth Committee) it will not receive the attention that it deserves. The Bureau's report recognizes the importance of the special procedures of the Commission and the thematic mandates for fostering United Nations efforts to promote and protect internationally recognized human rights. It is important that the United Nations treatment of the mercenary problem remains within the remit of this branch of the Commission on Human Rights.

Recommendation

International Alert recommends that the Commission on Human Rights maintain the mandate of the Special Rapporteur on the use of mercenaries for at least the next three years and investigate ways to broaden the mandate.

Self-determination

9. Mercenarism threatens the exercise of the right to self-determination of peoples and undermines the territorial integrity of the State and internal law and order. By participating in foreign conflicts in the ultimate political outcome of which they have no stake, mercenaries make unlawful interventions in sovereign States in contravention of the established purposes and principles of the United Nations, specifically the non-resort to armed force set out under Article 2 (4) of the Charter of the United Nations. Allowing their continued presence (often on each side of a conflict) can only aggravate existing tensions, and protract and prolong conflicts. In addition, their presence causes harm to the security of those affected by undermining democratic procedures and the functioning of economies.

10. It is the responsibility of States to stop their citizens engaging in mercenary activity and leaving their territories to make unlawful interventions in foreign conflicts. This was emphasized in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, which declared that "every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursions into the territory of another State". 6/ There should be international jurisprudence for these obligations to be upheld. The introduction of such measures now would also be consistent with Governments' increasing vigilance with respect to the export of arms from their territories.

Recommendation

International Alert recommends that the Member States of the United Nations fulfil their obligations not to interfere in the affairs of other sovereign States by introducing legislation which characterizes mercenarism as a criminal offence and contains measures to prevent its citizens from leaving its territory to participate in foreign conflicts as mercenaries.

Human rights

11. Mercenaries are soldiers of fortune who are thought to commit human rights violations in contravention of internationally recognized human rights and humanitarian law. The reasons for these violations are many, including the monetary incentive attached to mercenaries' conduct in war, but also the fact that mercenaries occupy a grey area in international humanitarian law and do not have privileged status. Article 47 of Protocol I to the Geneva Conventions (1949) defines a mercenary 7/ and the status they are to be accorded in the rules of war. The article also provides that a mercenary as so defined "shall not have the right to be a combatant or a prisoner of war".

12. Because the definition in the article is overly narrow in that six components must be cumulatively met before an individual is deemed a mercenary, mercenaries do not consider themselves bound by, and therefore do not respect, the laws of war. Stripping mercenaries of the rights of a combatant and prisoner of war is furthermore not only against the established principle of humanitarian law, that all belligerents should be treated equally, but also makes them even less inclined to abide by their obligations as combatants since they cannot expect to benefit from the rights attached to that status. Not being accorded prisoner of war status has also been used as an excuse by captors of mercenaries for committing gross human rights violations against them.

13. Mercenaries have traditionally been used because of their perceived military expertise. Private security and military companies similarly offer to improve the military capability of their client's forces. The introduction of such overwhelming military potential, however, often provides the means to carry out highly ferocious and destructive acts of violence and can exacerbate already poor human rights situations and prevent the just and peaceful transformation of violent conflicts. In the same way as the introduction of weapons into conflict regions can fuel violence and lead to human rights violations, so the use of mercenaries in situations of violent conflict can have an equally adverse effect.

Recommendation

The Office of the High Commissioner for Human Rights should publicize the adverse effects of mercenary activity on human rights and render advisory services to States that are affected by them.

Links with criminal activities

14. Mercenaries have also been linked to illicit and criminal activities including drug-trafficking, arms-trafficking, illegal extraction of resources and even acts of international terrorism. 8/ These links demonstrate the multifaceted nature of the mercenary phenomenon and the reasons for it being dealt with accordingly by the United Nations system. There have been cases of mercenary groups involved in highly intricate arms trafficking deals and supply routes, some in breach of United Nations arms embargoes. This is something that has been recognized in the preamble to the draft United Nations protocol against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, which forms part of the Convention on Transnational Organized Crime being prepared by the Commission on Crime Prevention and Criminal Justice and which includes mercenary groups in its remit. There is also evidence of mercenary involvement in acts of international terrorism. Mercenaries are hired by terrorist groups to carry out acts of deadly violence and indiscriminate terrorist attacks - in so doing becoming terrorists themselves - because of their expertise in explosives and technical devices. 9/

15. The Bureau's report is aimed at enhancing the Commission's mechanisms so as to improve the capacity of the United Nations to promote and protect internationally recognized human rights. In view of the above, a way of both rationalizing and strengthening the Commission's efforts to address the mercenary problem would therefore be to cultivate links with branches of the United Nations system dealing with criminal activities associated with mercenarism. Such an integrated and mutually enhancing approach to dealing with these interrelated problems would also widen United Nations jurisdiction over these issues.

Recommendation

The Commission should seek to work more closely with the Crime Prevention and Criminal Justice Division of the United Nations through, for instance, working and study groups, so as to tackle the issue of mercenarism as a matter of drug-trafficking, arms-trafficking, illegal extraction of resources and even acts of international terrorism.

Notes

1/ The Security Council and the General Assembly had passed resolutions condemning the use of mercenaries previously, but they were restricted to specific conflicts.

2/ General Assembly resolution 2465 (XXIII).

3/ The following 16 States have ratified the Convention: Azerbaijan, Barbados, Belarus, Cameroon, Cyprus, Georgia, Italy, Maldives, Mauritania, Saudi Arabia, Seychelles, Suriname, Togo, Turkmenistan, Ukraine and Uzbekistan. The following 10 States have signed but have yet to ratify the Convention: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania, Uruguay and Yugoslavia.

4/ E/CN.4/1999/104.

5/ The voting was as follows: In favour: Bangladesh; Bhutan; Botswana; Brazil; Cape Verde; Chile; China; Congo; Cuba; Democratic Republic of the Congo; Ecuador; El Salvador; Guatemala; Guinea; India; Indonesia; Madagascar; Malaysia; Mali; Mexico; Morocco; Mozambique; Nepal; Pakistan; Peru; Philippines; Russian Federation; Rwanda; Senegal; South Africa; Sri Lanka; Sudan; Uganda; Uruguay and Venezuela. Against: Austria; Canada; Denmark; Germany; Japan; Luxembourg; Poland; United Kingdom of Great Britain and Northern Ireland and United States of America. Abstaining: Argentina; Belarus; Czech Republic; France; Ireland; Italy; Republic of Korea and Ukraine. Tunisia later advised that, had it been present, it would have voted in favour of the draft resolution. Draft resolution was introduced by Cuba and was sponsored by Algeria, the Democratic Republic of the Congo; Egypt; Guinea; Mali; Swaziland and Uganda. Angola; Cameroon; Ethiopia; Ghana; India; Madagascar and Nigeria subsequently joined the sponsors. The representative of the United Kingdom requested the vote. Cuba requested the roll-call vote.

6/ General Assembly resolution 2625 (XXV) of 24 October 1970. The resolution was adopted without a vote.

7/ A mercenary is any person who: (a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain ...; (d) is neither a national of a party to the conflict nor a resident of a territory controlled by a party to the conflict; (e) is not a member of the armed forces of a party to the conflict; (f) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces. This is also the definition used in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

8/ See "Use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination", Note by the Secretary-General (A/53/338).

9/ Ibid.